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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Joe Newman,

10 Plaintiff,

11 v.

12 Show Low Police Department, et al.,

13 Defendants.
14

No. CV-13-08005-PCT-JAT

ORDER

15 Pending before the Court is Defendants' Motion for Summary Judgment (Doc.
16 76). The Court now rules on the motion.

17 **I. Background¹**

18 On January 27, 2011, Show Low Police Department Officer Steven Williams
19 pulled over Plaintiff Joe Newman because Plaintiff's van had a cracked windshield. (Doc.
20 77 ¶ 1). After Plaintiff pulled over and while Officer Williams was reporting the traffic
21 stop to police dispatch, Plaintiff opened the driver's door of his van and got out of the
22 vehicle. (Doc. 77 Exs. 1A, 1B). Officer Williams immediately told Plaintiff to return to
23 his van, but Plaintiff instead shouted at Officer Williams, demanding to know the
24 answers to a number of questions concerning the stop. Plaintiff appeared belligerent and
25 aggressively walked toward Officer Williams, eventually stopping between the back of

26 _____
27 ¹ Although Plaintiff did not file a controverting statement of facts, the Court
28 construes Plaintiff's factual arguments contained in his response to Defendants' motion
as a controverting statement of facts, and views any disputed facts in the light most
favorable to Plaintiff.

1 Plaintiff's van and the front of Officer Williams' car. Officer Williams repeatedly told
2 Plaintiff to return to his van, but Plaintiff initially did not comply. Instead, Plaintiff
3 continued shouting and gesturing at Officer Williams until Officer Williams drew his
4 Taser and pointed it at Plaintiff. At this point, Plaintiff returned to his van and sat inside.
5 (*Id.*)

6 Officer Williams called for backup. Officer Cory Fechtelkotter arrived, and the
7 two approached Plaintiff's van, with Officer Williams on the driver's side and Officer
8 Fechtelkotter on the passenger's side. As soon as Officer Williams began speaking with
9 Plaintiff, Plaintiff resumed shouting and began to argue with Officer Williams. Plaintiff
10 handed Officer Williams his insurance information, and Officer Williams asked Plaintiff
11 for his driver's license. Plaintiff continued arguing and shouting during this entire period
12 of time. Officer Williams then told Plaintiff that he was under arrest and ordered Plaintiff
13 to leave his van. Plaintiff refused. Officer Williams again ordered Plaintiff to step out of
14 his van. (*Id.*)

15 A struggle between the officers and Plaintiff ensued, during which Officer
16 Fechtelkotter threatened to use his Taser on Plaintiff if Plaintiff would not comply.
17 Officer Fechtelkotter fired his Taser but the probes never contacted Plaintiff's body.
18 Officers Williams and Fechtelkotter, along with Sergeant Spear, brought Plaintiff to the
19 ground using a control hold. The officers placed their knees on Plaintiff's legs and back
20 to hold Plaintiff still while they handcuffed him. Once Plaintiff was handcuffed, the
21 officers did not use any force against Plaintiff. The officers then helped Plaintiff to his
22 feet, placed him in a patrol car, and took him to the station. (*Id.*)

23 Plaintiff was ultimately convicted of resisting arrest. (Doc. 77-1 at 25).

24 **II. Legal Standard**

25 **A. Summary Judgment**

26 Summary judgment is appropriate when "the movant shows that there is no
27 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
28 of law." Fed. R. Civ. P. 56(a). "A party asserting that a fact cannot be or is genuinely

1 disputed must support that assertion by . . . citing to particular parts of materials in the
2 record, including depositions, documents, electronically stored information, affidavits, or
3 declarations, stipulations . . . admissions, interrogatory answers, or other materials,” or by
4 “showing that materials cited do not establish the absence or presence of a genuine
5 dispute, or that an adverse party cannot produce admissible evidence to support the fact.”
6 *Id.* 56(c)(1)(A), (B). Thus, summary judgment is mandated “against a party who fails to
7 make a showing sufficient to establish the existence of an element essential to that party’s
8 case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v.*
9 *Catrett*, 477 U.S. 317, 322 (1986).

10 Initially, the movant bears the burden of pointing out to the Court the basis for the
11 motion and the elements of the causes of action upon which the non-movant will be
12 unable to establish a genuine issue of material fact. *Id.* at 323. The burden then shifts to
13 the non-movant to establish the existence of material fact. *Id.* The non-movant “must do
14 more than simply show that there is some metaphysical doubt as to the material facts” by
15 “com[ing] forward with ‘specific facts showing that there is a *genuine* issue for trial.”
16 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting
17 Fed. R. Civ. P. 56(e) (1963) (amended 2010)). A dispute about a fact is “genuine” if the
18 evidence is such that a reasonable jury could return a verdict for the non-moving party.
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant’s bare
20 assertions, standing alone, are insufficient to create a material issue of fact and defeat a
21 motion for summary judgment. *Id.* at 247–48. However, in the summary judgment
22 context, the Court construes all disputed facts in the light most favorable to the non-
23 moving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004).

24 **B. Qualified Immunity**

25 “The doctrine of qualified immunity protects government officials ‘from liability
26 for civil damages insofar as their conduct does not violate clearly established statutory or
27 constitutional rights of which a reasonable person would have known.” *Pearson v.*
28 *Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818

1 (1982)). This protection “applies regardless of whether the government official’s error is
2 ‘a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and
3 fact.’” *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 567 (2004)). There is a two-step test
4 for resolving a qualified immunity claim: the “constitutional inquiry” and the “qualified
5 immunity inquiry.” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The “constitutional
6 inquiry” asks whether, when taken in the light most favorable to the non-moving party,
7 the facts alleged show that the official’s conduct violated a constitutional right. *Id.* If so, a
8 court turns to the “qualified immunity inquiry” and asks if the right was clearly
9 established at the relevant time. *Id.* at 201-02. This second inquiry “must be undertaken
10 in light of the specific context of the case, not as a broad general proposition.” *Id.* at 201.

11 Courts are “permitted to exercise their sound discretion in deciding which of the
12 two prongs of the qualified immunity analysis should be addressed first in light of the
13 circumstances in the particular case at hand.” *Pearson*, 555 U.S. at 236.

14 C. Excessive Force

15 A claim for excessive force “in the context of an arrest” is analyzed for a Fourth
16 Amendment violation. *Graham v. Connor*, 490 U.S. 386, 394 (1989). The inquiry is
17 “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and
18 circumstances confronting them, without regard to their underlying intent or motivation.”
19 *Id.* at 397. This requires balancing “the extent of the intrusion on the individual’s Fourth
20 Amendment rights against the government’s interests.” *Espinosa v. City & Cnty. of San*
21 *Francisco*, 598 F.3d 528, 537 (9th Cir. 2010).

22 The Court of Appeals engages in a three-step analysis to determine if a Fourth
23 Amendment violation has occurred. *See id.* “First, we must assess the severity of the
24 intrusion on the individual’s Fourth Amendment rights by evaluating ‘the type and
25 amount of force inflicted.’” *Id.* (quoting *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9th
26 Cir. 2003)). “Next, we must evaluate the government’s interests by assessing (1) the
27 severity of the crime; (2) whether the suspect posed an immediate threat to the officers’
28 or public’s safety; and (3) whether the suspect was resisting arrest or attempting to

1 escape.” *Id.* (citing *Graham*, 490 U.S. at 396). “Third, ‘we balance the gravity of the
2 intrusion on the individual against the government’s need for that intrusion.’” *Id.* (quoting
3 *Miller*, 340 F.3d at 964).

4 Because balancing the officers’ intrusion on an individual’s Fourth Amendment
5 rights against the government’s interests “nearly always requires a jury to sift through
6 disputed factual contentions, and to draw inferences therefrom,” the Court of Appeals has
7 “held on many occasions that summary judgment or judgment as a matter of law in
8 excessive force cases should be granted sparingly.” *Santos v. Gates*, 287 F.3d 846, 853
9 (9th Cir. 2002). But “defendants can still win on summary judgment if the district court
10 concludes, after resolving all factual disputes in favor of the plaintiff, that the officer’s
11 use of force was objectively reasonable under the circumstances.” *Scott v. Henrich*, 39
12 F.3d 912, 915 (9th Cir. 1994).

13 **III. Analysis**

14 Plaintiff’s sole surviving claim is against Defendants/Officers Williams, Spear,
15 Roby, and Fichtelkotter for section 1983 liability stemming from the use of excessive
16 force in arresting Plaintiff. *See* (Doc. 34 at 5-6). The Court will turn to the first prong of
17 the qualified immunity analysis: whether the facts of Plaintiff’s arrest, viewed in the light
18 most favorable to Plaintiff, show that the officers violated Plaintiff’s constitutional rights.
19 In other words, the Court must determine whether there exists a genuine issue of material
20 fact as to whether Defendants used excessive force in arresting Plaintiff.

21 **A. Plaintiff’s Version of the Facts**

22 At the outset, the Court notes that Plaintiff’s traffic stop and arrest were recorded
23 on a police dashcam, and Defendants have submitted a copy of this video in support of
24 their motion for summary judgment (Exhibit 1B). The Court has reviewed the video as
25 well as all of the other evidence submitted in connection with Defendant’s motion and
26 Plaintiff’s opposition to the motion. Plaintiff disputes the veracity of the video and asserts
27 that events unfolded very differently from those depicted in the video. (Doc. 78).

28 In *Scott v. Harris*, 550 U.S. 372 (2007), the Supreme Court confronted the

1 situation in which a plaintiff's story of events is contradicted by a videotape whose
2 authenticity cannot reasonably be questioned. There, the court emphasized that the
3 standard for summary judgment requires a *genuine* dispute of material fact: "[T]he mere
4 existence of *some* alleged factual dispute between the parties will not defeat an otherwise
5 properly supported motion for summary judgment; the requirement is that there be no
6 *genuine* issue of *material* fact." *Scott*, 550 U.S. at 380 (quoting *Anderson*, 477 U.S. at
7 247-48). "When the record taken as a whole could not lead a rational trier of fact to find
8 for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* (quoting *Matsushita*,
9 475 U.S. at 586-87). Thus, the Supreme Court held that "[w]hen opposing parties tell two
10 different stories, one of which is blatantly contradicted by the record, so that no
11 reasonable jury could believe it, a court should not adopt that version of the facts for
12 purposes of ruling on a motion for summary judgment." *Id.*

13 In the present case, no reasonable jury could find the facts surrounding Plaintiff's
14 arrest to be as Plaintiff depicts them. Plaintiff alleges that Officer Fechtelkotter shot
15 Plaintiff with his Taser while Plaintiff was standing and other officers were holding
16 Plaintiff's arms behind his back. (Doc. 28 at 3). Plaintiff also alleges that Officers Spear
17 and Roby drove their knees into Plaintiff's back causing serious injuries, and that these
18 officers also beat him. (*Id.* at 4). The Court's review of the video shows that the quality of
19 the recording is good, the sound quality is good, and there is no evidence of Plaintiff's
20 allegations. The officers place their knees on Plaintiff's back in a manner that although
21 done with the purpose of restraining Plaintiff, is not so forceful such that injury would
22 reasonably be expected.

23 Plaintiff maintains, as he has since the beginning of his lawsuit, that Defendants
24 have edited the video as part of a conspiracy to protect the officers. (Doc. 78 at 1, 4).
25 Plaintiff fails to cite, however, any evidence that would cause a reasonable jury to believe
26 his wild claims. Fed. R. Civ. P. 56(c)(3). Nor does the video display any signs of editing
27 that would be apparent to a jury, such as abrupt transitions between scenes. Accordingly,
28 the Court concludes that no reasonable jury could believe Plaintiff's version of events.

1 See *Scott*, 550 U.S. at 380-81.

2 **B. Qualified Immunity**

3 Under the first prong of the qualified immunity analysis, the issue is whether the
4 officers violated Plaintiff's constitutional rights by using excessive force in arresting
5 Plaintiff. This requires the Court to apply the three-step *Graham* analysis to determine
6 whether the officers' actions were objectively reasonable. The first inquiry is the "type
7 and amount of force inflicted" upon Plaintiff in arresting him. Here, the amount of force
8 used was slight. The officers pulled Plaintiff out of his car, grappled with him as he
9 resisted, and took him to the ground to handcuff him. Although Officer Fechtelkotter
10 drew his Taser and fired at Plaintiff, the probes missed Plaintiff and therefore, under the
11 particular circumstances of this case, the use of the Taser ultimately did not inflict any
12 force upon Plaintiff. Thus, the force inflicted upon Plaintiff was a minor intrusion upon
13 his Fourth Amendment interests.

14 On the other hand, the other three *Graham* factors weigh in favor of the officers.
15 At the time that the officers informed Plaintiff that he was under arrest, Plaintiff's crime
16 was failure to comply with a police officer. Plaintiff's aggressive posturing and erratic
17 behavior posed an immediate threat to the officers' safety because a reasonable officer
18 would believe that an aggressive individual is more likely to assault an officer and
19 because a reasonable officer would also believe that a non-compliant individual is more
20 likely to assault an officer. Plaintiff resisted his arrest and therefore the officers had no
21 choice but to use some level of force to arrest Plaintiff.

22 Finally, balancing the gravity of the force inflicted upon Plaintiff against the
23 officers' need to inflict that force, a reasonable jury could conclude only that the officers'
24 use of force against Plaintiff was objectively reasonable under the circumstances. From
25 the video it is apparent that the officers used the minimum level of force necessary to
26 arrest Plaintiff, and the minor restraints placed upon Plaintiff (including holding him
27 down while the handcuffs were applied) were necessary to arrest a non-compliant,
28 aggressive individual. The officers did not violate Plaintiff's Fourth Amendment rights

1 when they arrested Plaintiff.

2 Plaintiff makes a number of vague statements in his response to Defendants'
3 motion as well as in his improperly filed surreply.² See (Doc. 78; Doc. 82). In a nutshell,
4 Plaintiff attacks the veracity of the video of his arrest and attempts to explain his state of
5 mind during the arrest. For example, Plaintiff states that he had serious concerns about
6 his personal safety and that he complied with Officer Williams' commands when he got
7 back inside his van. (Doc. 78 at 2). Plaintiff also accuses Officer Williams of having a
8 "controlling and abusive character," (*id.*), and so forth. Although Plaintiff offers
9 numerous interpretations for his actions as well as unsupported allegations of an edited
10 video, Plaintiff offers nothing that creates a genuine dispute of material fact as to the
11 circumstances surrounding Plaintiff's arrest.

12 Accordingly, because the officers used an objectively reasonable level of force in
13 arresting Plaintiff, Plaintiff's section 1983 claim fails as a matter of law.

14 **IV. Conclusion**

15 For the foregoing reasons,

16 **IT IS ORDERED** granting Defendants' Motion for Summary Judgment (Doc.
17 76).

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
19 for Defendants and terminate this case.

20 Dated this 20th day of May, 2015.

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24 
25 James A. Teilborg
26 Senior United States District Judge

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28 ² The Court notes that Plaintiff has also improperly filed two additional documents
containing argument on this motion. See (Docs. 86 & 88). Although the Court could
strike these documents as procedurally improper, the Court has nonetheless reviewed all
of the arguments presented therein and finds none of them to be meritorious.